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THE AUTHORITY AND INVIOLABILITY OF THE CODE OF LEGAL ETHICS.

For the same reason that different communities may have different standards of morality in general, so, also, different castes, guilds, crafts or professions, may, because of their peculiar lines of work and the interrelation and association of their members, require additional standards to determine the propriety and morality of actions and transactions peculiar to such castes, guilds, crafts or professions. The profession of the law is no exception to this rule. The code of legal ethics is that system of rules which by mutual consent is observed by members of the legal profession as the standard by which to determine the propriety of their conduct and relationship toward their clients, the courts or other members of the profession. Of course such a system of ethics does not supplant the general code observed by the community as a whole. It only adds to these standards of morality, observed by the general public, additional rules of conduct applicable to the profession of law and its peculiar relationships and duties.

These rules which constitute the code of legal ethics, are as a general rule unwritten. Some states have tried the experiment of codifying the rules relating to professional ethics, with the result that they have experienced the difficulty which invariably attends the task of converting abstract ethical propositions into concrete forms of legal expression. It is safe to expect that the code of ethics will remain, like the British constitution, unwritten, but none the less inviolable for all that.

No caste, guild, craft or profession is possessed of a code of ethics which is more jealously guarded than that of the profession of law. And this is not without reason. No profession, not even that of the doctor or the preacher, are as intimate in their relationship with the people as that of the lawyer. To the doctor the patient discovers his physical ailments and symptoms, to the preacher the communicant broaches as a general rule only those things that commend him in the eye of heaven, or those sins of his own for which he is in great fear of eternal punishment, but to his lawyer he unburdens his whole life, his business secrets and difficulties, his family relationships and quarrels and the skeletons in his closet. To him he often commits the duty of saving his life, of protecting his good name, of safe-guarding his property, or regaining for him his liberty. Under such solemn and sacred responsibilities, the profession feels that it owes to the people who thus extend to its members such unparalleled confidence the duty of maintaining the honor and integrity of that profession on a moral plane higher than that of the merchant, the trader or the mechanic. And having the power to maintain its high professional standards by a show of authority possessed or enjoyed by no other profession, a lawyer takes his professional life in his hand when he violates any of these unwritten rules of conduct sustained by the overwhelming sentiment of the profession and strictly and summarily enforced by the courts.

The young lawyer, fresh from the victories of the class-room may be inclined sometimes to become restless under the limitations imposed upon him by the code of ethics and to regard them as an imposition. It is only when it is explained to him that his profession is not an independent one, that its members are mere officers of the court and not only derive all their authority from the court but are subject to all reasonable orders and regulations imposed upon them by the courts and, through the courts, by the profession itself, that he recognizes not only the unreasonableness of his objections but their futility as well.

Another deterring influence to one inclined to be recalcitrant, and one not to be lightly estimated, is that of the respect and goodwill of other members of the profession. The public very wisely rates a lawyer by what his professional brethren think of him, and an advocate who, by his unprofessional tactics and conduct, assiduously invites and cultivates the enmity of the members of his own bar, will very quickly hit the bottom, and stay there among the "snitches" and vagabonds of the profession until he comes to himself, and by circumspecting his conduct and

courting the confidence and respect of other lawyers, he finally wins the place to which his ability entitles him.

NOTES OF IMPORTANT DECISIONS.

INTOXICATING LIQUORS—SALE OF LIQUORS TO BE KEPT ON ICE AND DELIVERED SUNDAY.—Ingenious are the methods by which the vendor of intoxicating liquors seeks to evade the effect of the stringent laws which are aimed at his trade. The Sunday laws are among those which are most obnoxious to him. A recent attempt to evade the Sunday law is disclosed by the recent case of Wallis v. State (Tex.), 78 S. W. Rep. 231, where it was held that it was a violation of the Sunday liquor law for a saloon keeper to sell beer on Saturday, with an agreement to keep it on ice for the purchaser till Sunday, and then on Sunday to hand it out to him through a broken glass in the door.

The court, in the course of its opinion, said: "The case resolves itself into the proposition whether a saloon keeper can make sales of his goods on Saturday, put them in the refrigerator, keeping them cool until Sunday, and then deliver said goods to his customers. If he can do it in one instance, he can do the same thing in another or other instances. And if he should make a sufficient number of sales for delivery on the next day, his house might be thus kept open the entire day to consummate deliveries. An essential part of the business of a saloon keeper is the keeping of his drinks cool, or the cooling of them with ice in the summer; and if he can make sales on Saturday, and keep the goods of the purchaser in his refrigerator for delivery on Sunday, he would be compelled to keep open for that purpose. Although he makes no sale on Sunday, and receives no money on Sunday for goods previously sold, still he has brought about the necessity of keeping open for the delivery of his wares.

PARTIES—ACTION FOR DAMAGES FOR NOT BEING MADE A PARTY TO A LITIGATION.—It is not always that people are anxious to be made parties defendant to an action; and it is certainly unique for a party to be so deeply affronted as to resort to a suit of law against a plaintiff in a former action who deliberately left him out as one of the defendants to his action. Such, however, is what is revealed in the case of Friend v. Means (Ky.), 78 S. W. Rep. 164. In this case A sold B a tract of land, reserving a lien on the unpaid purchase money. B mortgaged the land to C. B also sold part of the land to D, who failed to put his deed on record. Subsequently B foreclosed his mortgage. To this proceeding A filed a cross-petition setting up his vendor's lien, but did not make D a party. On foreclosure of B's vendor's lien, D's property was sold at public sale. D sued A for not being made a party to the proceeding. The court held that where the holder of an unrecorded deed to real estate, subject to a remote vendor's lien, is not made a party defendant to the proceedings foreclosing the lien, her remedy for loss sustained is on the warranties she holds, and not an action for damages against such remote vendor. The court, in rendering its opinion in this case, said: "Appellee was under no duty to make her a party defendant to the action in which he set up his vendor's lien, even if he had known she owned an interest in the land. No legal right of hers could be prejudiced in an action to which she was not a party and properly before the court. That she was not made a party was due to the fact that she had not placed her deed to record, and those who were in charge of the litigation had no knowledge of her interest. If she had been made a party, she could not have fared better than she did, as, under the agreed facts, she had no defense, either to the vendor's lien of appellee or the mortgage lien of S. B. Bubkner. Her only remedy for the loss she sustained is upon the warranties she holds from her immediate and remote vendors.

This action is both unique and untenable; wherefore the judgment, peremptorily instructing the jury to find in favor of the appellee, is affirmed."

POLICE POWER—PROHIBITING THE EXPLOSION OF FIRE-CRACKERS ON THE FOURTH OF JULY.—The patriotic American citizen feels that the constitution surrounds him with perfect liberty to celebrate the Fourth of July with as much noise as he can make, and he is inclined to resent legislative interference or the part of a state or municipality to interfere with his ancient prerogatives in this regard. Thus, in the recent case of City of Centralia v. Smith (Mo.), 77 S. W. Rep. 488, a city ordinance prohibited the explosion of fire-crackers without the written consent of the mayor. The court held that this ordinance was a valid exercise of the police power and that its enforcement on the Fourth of July could not be denied on the ground of estoppel by any proof of a "tacit understanding." The court said:

"The ordinance of said city which defendant is charged with violating prohibits the explosion of 'fire-crackers, Roman candles, squibs, pinwheels, throwing turpentine balls, or other combustible device, without the written consent of the mayor specifying the time and place where,' etc. We regard it as within the police power of the city to enact the ordinance. The notorious fact that fires, frightening of horses, and serious accidents to both actors and spectators commonly follow such amusement, is ample and reasonable ground justifying the exercise of the supervisory restraining power of the municipality.

The defendant claims the ordinance to be invalid as delegating a legislative power to the mayor. The rule is correctly stated by defendant, as shown by authorities in his brief, that legislative power cannot be delegated, but we do not consider that any such power is delegated by

the ordinance in question. It prohibits the explosion of fire-crackers, etc., 'without the written consent of the mayor specifying the time and place.' This was not a delegation of legislative power. It was a mere cautionary clause, to the end that such matters might be supervised by the executive officers of the city. It was no more a delegation of legislative power than is the common municipal mode of restraining the carrying of firearms except by written permission of the mayor."

THE IDEALS OF THE AMERICAN ADVOCATE—A SYMPOSIUM.

HON. SIMEON E. BALDWIN.
Justice Supreme Court of Connecticut.

Every true man works toward an ideal. He imposes it upon himself. In the rough but impressive phrase of Emerson, he has hitched his wagon to a star.

To this responsibility of the individual there is added for every lawyer a responsibility that comes from without. He owes a special duty to his profession, and to the world because he is of that profession. *Noblesse oblige.* Nobility, under our institutions, does not belong to any individual. If some foreign sovereign decorates an American with a title, it confers no pre-eminence upon him here. But under our institutions that nobility of purpose and character which belongs to the legal profession in other countries belongs to it in equal measure in the United States. It is everywhere, as concerns its most conspicuous office—the advocacy of causes—a profession of strenuous and chivalric endeavor, and honored, as such, now, as much as in any former times or other lands.

It is the profession of those who contend for the rights of others. Altruism and personal sacrifice are its foundations. Let a lawyer plead his own cause, and he finds, as the proverb says, that he has a fool for his client.

The Romans put this strongly in their *Corpus Juris:* "Advocates who resolve the doubtful fates of causes and by the strength of their defense often set up again that which had fallen, and restore that which was weakened, whether in public or in private concerns, protect mankind not less than if they saved country and home by battle and by wounds. For in our warlike empire we confide not in those alone who contend with swords, shields and breastplates, but in advocates also; for those who manage others' causes fight as, confident in the strength of glorious eloquence, they defend the hope and life and children of those in peril."*

This sentiment was the inspiration of Malesherbes, when he claimed the honor of defending the king, whose disregard of his counsels had cost him his crown and was to cost him his life. It was the inspiration of Denman, in supporting the rights of Queen Caroline; of Evarts, before the senate of the United States in resisting the impeachment of President Johnson.

Great occasions like these come seldom, but the same qualities of advocacy are displayed and the same duties of advocacy discharged daily in every American state. Disregard of personal interest in fulfillment of professional obligations; sacrifice of personal convenience to secure the interests of others; putting all the powers of mind and body, in one supreme effort of concentrated energy, at the service of clients: these are the common story of the contests of the bar.

The undue multiplication of lawyers in the United States, incident in part to our being a new country, and in part to our being a great and rich one, has had a necessary tendency to weaken the personal sense of what is due from him to his profession, on the part of each individual member of it. It was partly to counteract this tendency that the American Bar Association was organized in 1878. Its influence has been steadily good. It has not only consolidated the American Bar, but has helped to bring together that of every state, and to put before it a high standard of professional honor and excellence. It has had no new ideals to propose. It could have none. The ideals of the advocate have been unchanged since the first foundation, on a sure footing, of courts of justice. They are all bound up in the one thought of the honor of the profession. Honesty may do for the office lawyer. Something finer — honor — is the watchword of the court-house.

The advocate can achieve the ideals of his profession without eloquence. Simple, plain, straightforward statement is often better than eloquence. He can achieve them without any

*Code II, 7 *de advocatis diversorum judiciorum*, 4.

legal learning that could be called profound. A fair knowledge of law, with the power to make the most of what he knows, is generally enough. He cannot achieve them without a high sense of the rights of man, as man; without a sincere reverence for the institutions of human justice; without patient, self-forgetful, chivalric devotion to his client's cause.

HON. HENRY WADE ROGERS,
Dean of the Yale Law School.

You ask for an expression of my views on the "Ideals of the American Advocate." I know of no reason why an American advocate's ideals should be different from those of an English advocate, or of any lawyer in the active practice of his profession, whether he advises clients in his office or addresses courts and juries. In any and all cases he acts unworthily if he disregards the fact that he is a minister of justice, and cannot do, as a lawyer, anything which dishonors him as a Christian gentleman and a law-abiding member of society.

When one reflects upon the lawyer's ideals there comes instinctively to mind Lord Brougham's celebrated declaration concerning an advocate's duty to his client. "An advocate," he said in his famous defense of Queen Caroline, "in the discharge of his duty knows but one person in all the world, and that person is his client. To save that client by all means and expedients, and at all hazards and costs to other persons, and among them to himself, is his first and only duty; and in performing this duty he must not regard the alarm, the torments, the destruction he may bring upon others. Separating the duty of a patriot from that of an advocate, he must go on, reckless of consequences; though it should be his unhappy lot to involve his country in confusion." This is a most extraordinary and wholly indefensible and unworthy statement of a lawyer's duty. Brougham was undoubtedly a remarkable man who possessed great talents, enjoyed a wide fame and played a very conspicuous part in public affairs. He devoted himself to many things. He was not merely a lawyer, but was a man of letters, a man of science, a statesman and one who aspired to excel in all things and who directed his attention to many branches of human knowledge. He was not the ideal lawyer. The law was not congenial to him and in his early life he spoke of it as "the cursedest of all cursed professions" and referred tc it as an "odious" profession. We do not look to such a man for our professional ideals. In his own day there were better and greater advocates at the bar, and on the bench more learned judges. We are told that he wanted that moral elevation which inspires confidence and respect, and which is essential to lasting fame. The statement I have quoted from him proves this estimate of him to be correct. If his declaration were to be accepted no honest man could enter the legal profession, or having entered it could remain in it.

As matter of fact the only men who attain to any great degree of eminence in the profession are, as a rule, men of conscience and honor. It was said in Lord Hale's day that there were as many honest men among lawyers, proportionately, as among any profession of men in England, not excepting the divines. I believe that is true of the profession in the United States to-day. The lawyer should never assert to court, jury or client what he does not believe to be the truth. He should never resort to practices which are not in conformity with the principles of morality.

We live, no doubt, in a commercial age. Its aspirations are for wealth, more than for renown or service. It is common observation that

> "The learned pate
> Ducks to the golden fool."

The bar may not have escaped entirely the insidious influence. No calling, not even the ministry, has been altogether untouched by it. Every profession has its mercenary side. But in no one of the learned professions is avarice the leading aim. In Robert Louis Stevenson's essay on "The Morality of the Profession of Letters" can be found this admirable statement: "The salary in any business under heaven is not the only, nor indeed the first question. That you should continue to exist is a matter for your own consideration; but that your business should be first honest, and second useful, are points in which honor and morality are concerned." The ethics of the profession require that a member of the bar shall be first an honest man. He must live in rectitude and cherish his personal honor, not forgetting that personal honor is the distinguishing badge of the legal profession.

HON. U. M. ROSE,
Ex-President American Bar Association.

It was the maxim of Cato the Censor that the orator "is a good man skilled in speaking." Quintilian, who is more emphatic, says: "Now, according to my definition, no man can be a complete orator unless he is a good man. I therefore require that he should be not only all-accomplished in eloquence, but possessed of every moral virtue."

As the art of public speaking is one that most lawyers must exercise, these sayings have often been applied to our profession. They may seem hard at first sight, since moral perfection is not attainable in our present state of existence. But it must be remembered that these distinguished men were speaking of the ideal orator; a model for aspiration, though too lofty for unimpaired realization. The complete orator and the perfect man are equally unknown; but one may be a good man though subject to many frailties, provided that these are not so grave or numerous as to stain his whole character. There are different degrees of virtue, but the habitual exercise of a few that are fundamental, such as are enjoined by legal ethics, tends to a gradual and general elevation of character. The central idea intended to be imparted by these two classical moralists is undoubtedly a true one.

These rule are not the work of Pharisaism, or the outcome of frivolous and over refining casuistry; they are practical, well defined, profitable, and are based on long observation and experience. In so far as the lawyer fails to live up to them he will derogate from his own best interests, will bring reproach on himself and his profession, and will lay up provision for the day of regret and remorse. However great our apostasy may be, the standards, handed down from generation to generation, are still there, and if we can by any effort on our part render them more commanding and serviceable, the line of duty is too plain to admit of hesitation or dispute. They do not embrace the entire sphere of moral sentiments, but they do include the whole circumferences of professional duties, erecting standards higher and more exacting than those which are commonly insisted upon, standards of courtesy, fairness, honesty, fidelity, truthfulness, good faith, and a quality of disinterestedness by no means common; in short, all of the attributes that go to make up the character of the true gentleman. The lawyer who lives up to these mandates stands on a proud eminence; his life, if he is not otherwise deficient, and if he is not made the victim of unrelenting and implacable fate, will be worth much in the world, while his influence will be a power in the land.

A good name is better than great riches, and words spoken by one who sets a praiseworthy and consistent example to his fellow men will be golden, while those uttered by a man of profligate habits and evil life will be as chaff, like those of the Duke of Wharton, the most brilliant orator of his time, but unprincipled and the slave of many vices, described by Pope, who knew him well, as possessing

"An angel tongue, which no man can dissuade."

Certainly the career of the lawyer is beset with difficulties, and is exposed to many temptations, but these are only multiplied and enhanced by evil practices.

Consistently with allotted space only one other point may be briefly mentioned. Fraternal feeling at the bar is something that softens the asperity of controversy, tends to the better administration of justice, and adds to the pleasures of life. It is neither so active nor so potent in our country as in others that might be named. The reasons are obvious, and they are closely allied with the immense expanse of our territory, and the want of compactness of much of our population, the facility of admission to the bar which is often indulged, and the general looseness of discipline. The American lawyer is frequently overworked. In England, France and Italy the advocate is relieved of much drudgery by the collaboration of attorneys, a well trained body of assistants, leaving him more time for social duties, the amenities of life, and the widening of the field of endeavor. Other restrictions peculiar to our situation might be recited; but however serious the obstacles may be, it is nevertheless true that the lawyer owes an affectionate allegiance to his profession, which demands a grateful remembrance; and that he should bring ungrudgingly his quota of influence to the work of elevating the tone of the bar, cheerfully lending his aid to secure the har-

mony of its members, and to the promotion of its dignity, honor and usefulness.

HON. JOHN F. PHILIPS,
United States District Judge.

As law is "the perfection of human reason" it ought to be "the pride of the human intellect," and the practice of it should be pursued rather for its honors than its pelf.

The spirit of commercialism has too largely taken possession of the profession. Fee-getting is the ruling passion, the effect of which is to narrow the mental horizon and eat out the heart. The ancient chivalry and sentiment of the advocate move him little nowadays, unless he perceives in the occasion some alchemy for transmuting the cause into gold. The ewe lamb of the orphan and the milch cow of the widow are turned over for protection to the shyster, who, if he win, takes the lamb and the cow for his fee. The most fruitful source of litigation to-day is on the increase because lawyer and client stand as full partners in the spoil.

The noblest quality of an advocate is intellectual honesty. The mind, whatever its endowments, that "toils in mischief"—that is not honest with itself—is apt to reflect a distorted image on court and jury. The practice of making counterfeit presentment naturally enough renders the mind oblique and sinister. By progressive steps it loses the sense of distinction between right and wrong. Whereas, the mental habit of presenting the law and the facts as they are brings the mind and heart into co-operation, exciting the sympathy born of candor, and exerting the power that ever lives in truth.

Another ideal of the advocate is that he should be the man of "high erected thought seated in the heart of courtesy." Obsequiousness evinces moral cowardice and mental weakness. Courtesy, without sincerity, is a false pretense. Amenity at the bar, if used merely as a feint to aid a sinister purpose, excites only disgust. There is no superior in odium to the professional Iago. The charlatan, if he be reasonably honest, is more tolerable.

While the advocate cannot always choose his client, yet, if he be constantly found in the advocacy of questionable transactions it evidences a readiness to make merchandise of his learning regardless of ethics. He may, with propriety, urge a case against his opinion of the better law, because the law of the case is what the court may declare it to be. But he cannot, with self-respect, advocate a cause he believes to be dishonest, or hurtful to society, or dangerous to the state. Cicero said, a lawyer may defend the guilty, under limitations, but his duty will never perm him to accuse the innocent. *Id facere laus est decet, non quod licet.*

No respectable lawyer can encourage litigation or foment petty strife. The street-soliciting advocate is the burning shame of the bar, whose dislike it were an honor to share by bench and bar.

The successful advocate now is logical and analytical rather than rhetorical and glittering. He is less original and inventive, because of accumulated precedents tending to develop the faculty of discriminating assimilation. He looks to ultimate results rather than present effect.

HON. T. A. SHERWOOD,
Ex-Justice, Missouri Supreme Court.

In the English and American Law, "advocate" is the same as "counsel," "counselor," or "barrister." Web. Dict.

In order to answer the requirements of the idea conveyed by the above title, premise must be assumed in the first place, that the person to be discussed has, of course, a thorough knowledge of his profession, as well as of cognate science, for, as Sir Walter Scott so tersely observes, "a lawyer who knows neither literature nor history is a mere mechanic."

Secondly—He must be gifted with an imagination of undoubted vigor in order to be able to look over the contemplated forensic battle-field, see and anticipate what the adversary is likely to do, and thus put himself in his place. Judge Elliott in his General Practice very deservedly bestows the need of great praise on the imaginative faculty, as being a necessity of legal success. And Beaconsfield asserted the imagination to be the most important factor in the science of human government.

Napoleon, too, as Bourienne relates, employed the mentioned faculty to great and successful advantage when, in the winter preceding his joining battle with the Austrian Melas, he used a map of Italy, on which with

pins tipped with black and red sealing wax, he delineated the respective positions of the Austrian and French troops, and the location of the battle-field. Subsequent events showed a victory won by Napoleon, where, and in the manner and the position predicted.

Thirdly—He must have great power and force of expression; this faculty usually accompanies the imaginative faculty, because whatever a man vividly sees with mental vision, that also, can he vividly describe.

Of course the capability of speaking fluently and without embarrassment, is seldom attained except by *practice*, although Lord Clive, in his first parliamentary speech, is an illustrious instance to the contrary.

Charles James Fox, the ablest debater the world ever saw, became such, he declared, by boring with his forensic efforts, successive parliaments for years.

Fourthly—He should be *eloquent*. In general the possessor of a noble imagination, one that can picture forth what the imaginer desires to portray, in "words that burn," coupled with the capacity to *think on foot*, is almost, of necessity, eloquent. But who shall say in what *eloquence* consists? Like certain liquids (not altogether unknown to the profession), it can only be tested by tasting.

Fifthly—He should be logically as well as legally accurate. Such bifold accuracy is not at all inconsistent with splendor of imagery nor an appropriate flow of words. S. S. Prentiss of Mississippi, Rufus Choate of Massachusetts, are conspicuous examples of this assertion's correctness.

Sixthly—He should by constant study keep his armour burnished. If "eternal vigilance is the price of liberty," so also is eternal industry the price of law.

Seventhly—He should, regardless of public clamor or adverse criticism, do his duty as he conscientiously sees it. If he chooses to defend a man charged with crime, he will not be slack in his diligence nor in his vigilance because he *believes*, or even because he *knows* the accused is guilty. Every man, though guilty, is entitled to the same orderly method of procedure, the same unscrupulous observance of all legal rights and forms, as if wholly innocent of the charge. Captain Kidd, placed on trial for piracy, is as safely guarded by the law, as would be the archangel Gabriel, when charged with a like offense. And this will be true so long as sections 22 and 30 of our Bill of Rights are obeyed. Although guilty, the accused has still a right to be tried according to the law of the land; "a law which hears before it condemns; which proceeds upon inquiry and renders judgment only after trial." Thus tried, the accused is entitled to counsel to defend him. If counsel defend him, then such defense is a legal and rightful defense, and casts no more discredit on such counsel thus engaged, than it casts on those provisions of the organic law which authorize and provide for such defense, or on the court which enforces them.

BY HON. J. W. DONOVAN,

Circuit Judge, Detroit, Mich.

The court room should be a place where none would fear to enter; but the intensity of practice has led a host of lawyers to the verge of abuse to so many, that timid women, and braver men, will suffer a wrong rather than be subject to the cross-fire of an enemy's advocate. And the question is pertinent—Is such conduct just on the part of counsel? Is it up to a high standard of ethics? Let us consider.

It is a common practice to overdo the answer back, or cross-fire dialogue of counsel in trials by jury. Lawyers attach so much value to repartee, that they would rather lose a case, than lose the last say with a witness. Such wit or personal abuse, as the case may be, is costly to a client, if his case is lost by it.

A very large proportion of verdicts are lost by cross-examiners in forcing witnesses to emphasize their denials of facts, or answers to important questions; as advocates usually get what they bargain for, if they start to be abusive. A small minority even complain of the trial court in their briefs on appeal, and seldom escape the ire of the Supreme Bench, with a fine fully equal to one day's pay for services, a brief stricken from the record, and plenty of deep humiliation as a reward for their evil doing. How any advocate can ever hope to advance by attempting to overrule a trial court, on other than legal grounds is a problem. Surely counsel who argue long after an adverse ruling, and attempt to alter it, in sight of a jury—only to be defeated in each attempt—is making slow prog-

ress. As nothing goes farther with a jury than the charge of the court, it is idle to incur one unkind word or sentence, by a slur or sneer at what is ruled upon, and fixed by the ruling. "That man is a fool," said Judge Maynard, "who disagrees with the trial judge openly." He might be able to convince the judge by an apt citation, but would always fail, if a harsher method was employed. It is as annoying to see a peppery lawyer cross-firing with a court, as to see a bad acting racer at the starting point. We lose some patience, much progress, and a little temper in either instance. And he is a wise counsel who works in harmony and without friction.

Few men are so fully known and accurately measured, as are advocates. In a court room ability is soon sifted. The test is easily applied, as in detecting genuine from spurious money, the pure water from the off color diamonds. Counsel cannot be too wise, too clear, too tactful, or too eloquent; nor are they ever too well prepared in their case. To win is not enough—merely to win is victory, to *win fairly* is to earn an honest fame. Take a few known cases: In the Parnell case, Piggott was detected of forging a letter—by a skillful cross-examination, but there was no mark of insult to the witness. In two recent instances in Michigan, one question in effect charged the witness with falsifying, without a rebuke from the judge (who never heard it) but it destroyed the verdict, and killed the cause of action. Another case, counsel barely said: "We want no small verdict, we've got to follow it on appeal. Of course they will appeal it, they always appeal," which reversed the case, and shows the trend of decisions to be against harshness of counsel.

But the climax of cases reversed by conduct of counsel is the examination of Russell Sage, in a suit for pushing a servant between himself and a man with dynamite. The New York Court of Appeals, has recently reversed the case, for asking Mr. Sage what companies he held stock in; what interest he charged clients; and what statements he made to reporters of being willing to spend large sums of money in law to defeat the action. Taking the decisions together, and the large number of reversals on *savage* remarks of counsel either to the jury or in fines in the supreme court on briefs, the trend of our higher courts clearly points in the direction of reform in the much abused license that counsel have exercised in the treatment of witnesses, and we may yet see the day when politeness and a larger power to please shall replace one of the glaring evils of American court practice.

HON. WILLIAM T. LORD.
Ex Justice Supreme Court of Oregon.

Does the practice of law, as affected by some forms of business conditions, as now existing, tend to dull the moral perceptions of the lawyer and lower the standard of professional duty? Certainly there has been no time in the past, when business schemes were more vast, or more far-reaching in their results, or when they have offered larger compensation for professional service. The intense pressure of modern life in all its phases of industrial and commercial activity, of corporate development and trust consolidation, aggregating immense business capital, have given rise to an almost endless variety of legal questions and controversies requiring professional advice and service. These contentions embrace nearly every branch of learning and require extensive knowledge and trained abilities for their investigation and discussion; they also involve large pecuniary interests which offer correspondingly large compensation for competent service. But these circumstances do not necessarily involve the performance of professional service not consistent with the strictest rule of propriety and manly rectitude. At the same time, they may afford the opportunity for high talent to degrade its service for high pay by helping a swindling concern to organize and conduct its fraudulent business and in defending its promoters from exposure and punishment. The dereliction of professional duty in such case would be the same, whether the services were rendered for a large or small concern, the only difference being that the larger would be able to offer greater compensation than the smaller, as an inducement for the required service. The danger lies in the more tempting reward which great aggregations of wealth are able to offer for services of doubtful propriety or deviations from professional rectitude. The commercial spirit of the age has greatly quickened the desire and increased the opportunities for the acqui-

sition of wealth. The lawyer is not exempt from the desires or frailties common to humanity. Like other men, he wants to accumulate wealth for the comforts and advantages, the influence and power which its possession is supposed to bring. But, in his case there are some influences at work to restrain the evil tendency of its too ardent pursuit, and preserve him from the temptations to violate his professional duty for sordid considerations.

The profession of law furnishes the means to obtain an honest livelihood and honorable distinction. These are worthy inducements for the employment of high talents and character. To become a member of the legal profession involves a course of study upon legal and equitable subjects and their relation to the material interests and well-being of society, which study is calculated to train and expand the mind, cultivate its moral sentiments, and fill its stores with useful knowledge. The training to equip a lawyer for the practice of his profession is an education in good morals as well as knowledge of the principles and philosophy of the law. His duties to his client, reinforced by his oath, bind him in their performance to a course of manly rectitude and scrupulous integrity. The high intellectual and ethical standard which the legal profession, as a body, and its law writers, have insistently demanded to be maintained, as a barrier against temptation to corrupt practices, and preserve the prestige of the profession, have tended to elevate his ideals of duty, and develop the best qualities of his character. These are influences constantly at work to restrain the lawyer from deviations of duty, to develop the good impulses of his nature, and to stimulate his ambition to a life of usefulness and honorable distinction among men. The lawyer is not degenerating in moral or intellectual culture. The bar still maintains its rank for deep learning, high mental discipline and refined moral culture. The bench, drawn from its ranks, represents the best product of civilization and is the bulwark of constitutional freedom. It is true there are shysters, but they are few and exceptional, usually known to the public and profession and shunned by both, except those who need their services and create the supply. Formerly the business of the law was limited as compared with its present volume and the affairs to which it was applied, plain and simple, as compared with the intricate and complex relations to which it must now be adapted. The old lawyer was a fine specimen of the legal profession. He was able and learned, eloquent and dignified. He prepared his speeches with care and delivered them with effect. He was ambitious of distinction and his talents gave him influence and standing in the community, and inspired its respect and confidence. But times change and men change with them. The advance of civilization and its gigantic business operation have wrought changes which have affected the legal profession. The lawyer of today is compelled to keep pace with its movements. There is less time and opportunity for speech-making and the display of oratory; but there is no abatement in the demand for highly trained lawyers of elevated character, endowed with extensive learning. The improved methods for committing thought to paper have enabled the lawyer to perform a vast amount of legal labor and submit his opinions in a form better calculated to influence and convince the mind. He is equal to his day and generation. The bar has not declined in character, power or influence. It still maintains the moral and intellectual standard of the law.

So long as the law prescribes, as requisites for admission to the bar, fair abilities, good morals and a knowledge of its principles, and the court rigorously enforces compliance with these conditions; so long as the study and practice of the law shall influence character tending to develop the mental faculties, refine the moral sense, and inspire aspirations for intellectual excellence, and honorable distinction; so long as the bar associations shall maintain its high ideals of intellectual culture and professional ethics, and exclude from its associations members guilty of moral delinquency, and cause to be rigorously weeded out from the profession all lawyers known to be engaged in corrupt practices; so long as legal writers and journals continue to urge the need of culture, learning and character, as essential to equip the lawyer, and of fidelity, honesty and strict integrity in the performance of his duties, and mercilessly expose and denounce all conduct, or practices involving derelictions of duty and bringing

reproach upon the legal profession, there will be no deterioration in the high standing and character of the lawyer, nor loss of influence and power, or lowering of the high intellectual and ethical standards, so long maintained by the profession.

ATTORNEY AND CLIENT—DUTY OF SURVIVING PARTNER OF LEGAL PARTNERSHIP TO CARRY ON CONTRACT FOR SERVICES.

CLIFTON v. CLARK, HOOD & CO.

Supreme Court of Mississippi, March 14, 1904.

Where a contract is made with an attorney, and it is specially contracted or understood that he alone is to do the work or to render the services, or his skill is exclusively depended upon, the death of the attorney terminates the contract, whether he is alone or is a member of a firm.

A general employment of a firm of attorneys being a joint employment of the members, and imposing the duty on each to discharge the joint obligation, one member cannot, on dissolution of the partnership by death or otherwise, refuse to carry to completion executory contracts with clients which were in force at the date of dissolution.

Where a client has entered into a contract for the employment of a firm of attorneys, and one member of the firm dies, the client cannot re-employ the survivor, and thereby defeat the claim of the estate of the deceased partner for services rendered by such partner; and, if the contract is performed by the survivor, the client is liable under the original contract with the firm.

TRULY, J.: The bill of complaint in this case was filed against the executors of the estate of J. A. Blair to recover the sum of $390.55 on a claim duly probated against said estate, being a balance due on open account by Blair at the date of his death. The executors filed a cross-bill, claiming as an offset fees due by complainants to Blair for legal services rendered. To this cross-bill a demurrer was filed, which being overruled, answer was made, and depositions taken on both sides. On final hearing the chancellor dismissed the cross-bill, as not being sustained by proof, and granted a decree against the estate of Blair for the amount sued for. From that decree appellants, the executors of Blair, prosecuted this appeal.

So far as material to the decision of the case, the following are the undisputed facts disclosed by this record: J. A. Blair and W. D. Anderson composed a firm of lawyers located in Tupelo, and doing business as counselors and attorneys at law, and general practitioners throughout the state of Mississippi. Under the terms of their partnership contract, J. A. Blair, the senior member of the firm, received three-fourths of all the fees, and W. D. Anderson, the other member, one-fourth. On September 5, 1895, Clark, Hood & Co., B. T. Clark & Co., and John Clark and B. T. Clark, as surviving partners of R. B. Clark & Co., entered into a written contract of employment with the legal firm of Blair & Anderson, whereby the said Blair & Anderson were employed to manage and conduct certain litigation then pending, in which said Clark, Hood & Co., individually and as a firm, and the Clarks, also, as surviving partners, were interested. This litigation, to a large extent, consisted of claims pending against the estate of R. C. Clark, deceased, and certain other matters growing out of the administration of said estate. The consideration of this employment was that the said contracting parties agreed to pay Blair & Anderson a stated fee of $1,200, and a contingent fee of 12 1-2 per cent upon all sums which the said attorneys might succeed in having allowed by the court against the estate of R. C. Clark. The pending litigation proceeded for a period of over three years, during more than two years of which time there was a continual taking of depositions in the case, needed in the preparation of the same for a hearing before the auditors and the chancery court. During the year 1898, J. A. Blair, the senior member of the firm, being in feeble health, procured the services of W. H. Clifton, a practicing attorney, to assist him in the preparation and trial of the Clark estate matters, and Clifton did render material assistance. After the case was prepared for trial, but before it came on for final hearing, J. A. Blair died, in November, 1898. After the death of Blair, Clark, Hood & Co. agreed that Clifton and Anderson, in conjunction with their other attorneys, should continue in the prosecution of the pending litigation, provided it would not cost the said Clark, Hood & Co. any more money for lawyer's fees. This understanding was agreeable to both Clifton and Anderson, but, in consideration of the fact that the death of Blair would entail more labor upon Anderson, the executors of Blair agreed that he (Anderson) should receive one-third of the contingent fee for which the Clarks and Hood had contracted, instead of one-fourth—his interest as evidenced by the terms of the co-partnership contract between Blair and Anderson. Subsequently Clark, Hood & Co., on account of a disagreement with another of their lawyers, by which he refused certain additional services which Clark, Hood & Co. demanded of him, without additional compensation, refused to abide by the understanding with Clifton and Anderson, and finally attempted to terminate, so far as related to the representative of Blair, the contract relations which had existed between them and the firm of Blair & Anderson. Thereafter W. H. Clifton still tendered his services, and held himself in readiness to discharge the duties of an attorney and counselor at law in and through said litigation, but his services were declined. On January 10th, after this attempt to abrogate the contract with Blair & Anderson, the Clarks and Hood made another contract with W. D. Anderson, by which they employed him, for the contingent fee of one-third of 12 1-2 per cent of the amount which might be recovered, to proceed with the conducting of the litigation, for

the managing of which they had contracted with Blair & Anderson in the lifetime of Blair. The duties devolved upon Anderson by this new contract were identical with those imposed upon him by the original contract made with Blair & Anderson, and the compensation was the same agreed on between Anderson and the executors of Blair. After the execution of this new contract with Anderson, the litigation proceeded under the management of Anderson and Robins, the other lawyer of Clark, Hood & Co., who had also been employed in the lifetime of Blair. The result of this new arrangement was that Clark, Hood & Co. paid out for lawyer's fees a considerable amount less than they would have been required to pay, had Blair lived, and the litigation been proceeded with under the existing contracts. After the final termination of the litigation, which resulted favorably to Clark, Hood & Co., the executors demanded Blair's portion of the contingent fee, which they claimed was due his estate under the contract with Blair & Anderson. This relief, as before stated, was denied by the chancellor, and forms the basis of this appeal.

It is urged by appellants that the chancellor misconceived the law applicable to the state of case made by this record, and that there are several different theories under which they are entitled to recover. It is said that the facts disclosed by the unsuppressed depositions show conclusively that during the lifetime of Blair it was agreed by all parties in interest that, on account of Blair's failing health, Clifton should be substituted in his place and stead, and that this was, in effect, the making of a new contract. Again it is said that after Blair's death this agreement was ratified by appellees, and Anderson and Clifton, as the substitute of Blair, were continued in charge of said litigation, and thereby appellees became bound to the estate of Blair for the amount of the contingent fee agreed on. Finally it is urged that, as appellees continued Anderson in control of the business intrusted to his late firm, they are by their acts estopped from claiming that the contractual relations existing between themselves and Blair & Anderson were terminated by the death of Blair, and that this was a waiver of any rights which they may have had of dissolving the relation of attorney and client.

The two first contentions are controverted by the appellees, and there is a sharp conflict in the testimony, and, if these were the only questions involved in the case, we would hesitate to disturb the finding of the chancellor upon the question of fact. It is manifest that, if Clifton was empowered by the clients to take Blair's place after Blair's death, or if they agreed to the substitution of Clifton in the place of Blair in his lifetime, the question would be absolutely free of doubt, because then it would not be a question of the rights arising upon the dissolution of a partnership, but would be a plain, simple suit upon a contract made and entered into between parties still living.

The grave and important question involved in this litigation is presented by the remaining contention of appellants. The case here presented is that of a contract made between clients and a firm of attorneys, general practitioners, who agree to perform certain legal services for certain compensation, partly absolute and in part contingent on ultimate success. Upon the death of one of the firm before a final termination of the litigation, the survivor completes the services, and conducts the litigation to its final and successful conclusion. What is the legal principle applicable to the case stated? The determination of this question necessitates the consideration of the relative rights and duties existing between attorney and client, and, as incidental to the main question, the duties and obligations imposed upon the survivor of a firm of attorneys.

The general rule in reference to contracts for special, personal services is accurately and clearly stated in the case of Cox v. Martin, 75 Miss., on page 238, 21 So. Rep. 612, 36 L. R. A. 800, 65 Am. St. Rep. 604, where it is said: "It is clear that wherever the continued existence of the particular person contracted with—the contract being executory—is essential to the completion of the contract, by reason of his peculiar skill or taste, death terminates the contract; as, for example, contracts of authors to write books, of attorneys to render professional services, of physicians to cure particular diseases, of teachers to instruct pupils, and of masters to teach apprentices a trade or calling." We adhere to this statement of the law in all cases to which it is applicable, but the case at bar is essentially different in its material facts from the case of Cox v. Martin. This is not a contract with any special attorney to render professional services. The continued existence of no particular person is essential to the completion of the contract. The successful consummation of the contract, or the rendition of the services contracted for here, does not depend upon the peculiar skill or taste of any named individual. This is a joint contract with a firm of attorneys who are both general practitioners. We iterate: Where a contract is made with an attorney, and it is specially contracted or understood that he alone is to do the work or to render the services, or that his skill exclusively is depended upon, then the death of the attorney terminates the contract, whether he be alone or a member of a firm. And so where a client enters into a contract with a firm of attorneys for certain legal services to be rendered, for a fee stated, or upon an implied promise to pay the value of the services rendered, and contracts, as here, for the services of both members, and one of that firm dies before the contract is finally completed; the client then has the option of abrogating the contract entirely by discharging the survivor, settling for services previously rendered, and employing other counsel to conclude his pending litigation. This we understand to be the full extent of the decision of this court in Dowd v. Troup, 57 Miss. 206. It is there held that the client permitting the surviving

partner to proceed with the services for which the firm had been previously fully paid could not be called on to pay any additional compensation to the individual member who had in fact performed the services. That case does not pass on the question, nor is it presented for necessary decision here, as to what compensation, if any, the attorneys would be entitled to recover for services rendered previous to the dissolution, should the client exercise his right of choice, and terminate the employment, where the fee under the contract was entirely contingent upon success. We intimate no opinion on this point. But see, as illustrative: Wright v. McCampbell, 75 Tex. 644, 13 S. W. Rep. 293; Landa v. Shook, 87 Tex. 609, 30 S. W. Rep. 536; Badger v. Celler, 41 App. Div. 599, 58 N. Y. Supp. 653; Smith v. Hill, 13 Ark. 174; Little v. Caldwell, 101 Cal. 553, 36 Pac. Rep. 107, 40 Am. St. Rep. 89.

The contract which forms the basis of the case at bar shows that the employment of Blair & Anderson was a joint employment of both members of the firm to render certain specified services, and to manage and conduct certain matters then in litigation. This contract entitled the clients to the services of the firm, but was not a contract for the individual services of any named member of the firm. Either party may attend to business intrusted to a firm of attorneys, for the act of each is the act of all, and such a general contract does not give the client the right to demand that any particular member of the firm shall render the services or conduct the litigation. Eggleston v. Boardman, 37 Mich. 14; Page v. Welcapt, 15 Gray, 536. So that when one member of a firm of general practitioners employed under such a contract dies, it becomes the duty of the surviving partner to hold himself in readiness to perform the services required of the firm under the contract, and to complete the unfinished business for the benefit of the client. This doctrine is impliedly recognized in the case of Dowd v. Troup, *supra*, where the surviving partner was denied extra compensation for services rendered after the death of his partner, and this conclusion can only be supported on the ground that the duty of completing the contract devolved on him as surviving partner. And it is there expressly stated that the surviving partner, in rendering such services, "was but discharging his own obligation as a member of the partnership." Inasmuch as a general employment of a firm of attorneys is a joint employment of the members, and it is the duty of each to discharge the joint obligation, one member of the firm cannot, upon dissolution of the partnership, whether by death or otherwise, refuse to carry to completion all executory contracts which were in force at the date of such dissolution. Walker v. Goodrich, 16 Ill. 341; Polsley v. Anderson, 7 W. Va. 202, 23 Am. Rep. 613; Johnson v. Bright, 15 Ill. 464; Smith v. Hill, *supra*. With the possible limitation that they might be entitled to some additional compensation from the estate of his deceased partner for services rendered in winding up unfinished business; we see no reason why the general rule applicable to commercial partnerships should not apply to surviving partners of firms of attorneys. Having jointly undertaken the business intrusted to the partnership, each partner was under obligation to conduct it to the end. They owed this to the client and to each other. The very basis of every partnership is that here is "an implied obligation on every partner to exercise due diligence and skill, and to devote his services and labors for the promotion of the common benefit of the concern." Star v. Cass, Adm'r., 23 Ind. 458; Story, Part. §§ 182, 331; Denver v. Roane, Ex'r, 99 U. S. 355, 24 L. Ed. 476; Osment v. McElrath, 68 Cal. 466, 9 Pac. Rep. 731, 58 Am. Rep. 17. As to the executory contracts only partially fulfilled the death of one partner does not absolve the other from the duty of rendering the services contracted for, and the active functions of the partnership are continued in existence until full performance by the surviving partner. This principle is applicable to partnerships between attorneys as to executory contracts when the individual, personal service of the deceased partner was not specially contracted for. Sterne v. Goep, Adm'r, 20 Hun, 396; Bates, Part., § 711; Denver v. Roane, *supra*. And in upholding the doctrine that this duty devolves on the surviving partner, and is one of the risks and obligations assumed by him in the formation of the partnership, the Supreme Court of California, in Little v. Caldwell, *supra*, says: "This rule is particularly applicable in the settlement of the partnership accounts of attorneys at law, when the firm has been dissolved by the death of one member, leaving contracts not fully performed, often constituting a large part of the assets of the partnership, and which it is the duty of the survivor, as far as possible, to complete and preserve for the benefit of the firm. While it is certainly true, when a professional partnership between attorneys at law is dissolved by the death of one, the survivor is entitled to his own future earnings, and is not required to make an allowance in the settlement of the partnership accounts for what may be termed the good will of the partnership, or for the profits of such future business as may have been given to him by former clients of the firm, still, in regard to unfinished business intrusted to the firm, and which the client permits the surviving partner to complete, such contract of employment, although not capable of assignment, is still to be viewed by a court of equity as an asset of the partnership; and it is none the less an equitable asset when, as in this case, the compensation for such services is entirely contingent upon the final success of the litigation in which the services are to be rendered."

In a class of cases beginning with McGill v. McGill, 2 Metc. (Ky.) 258, it is stated as the general rule that the death of one of the firm of

attorneys terminates the contract, but that the firm is entitled to compensation for services rendered during the continuance of the engagement, and the reason for the conclusion is thus stated: "A contract with a lawyer, the performance of which requires the exercise of professional skill, is personal in its character. The service of the person employed is indispensable in the performance of the contract. Lawyers are employed in professional business because the client has confidence in their integrity and in their qualifications." We have no fault to find with the language here employed, in all cases where applicable. A contract with a professional man for his individual services, as pointed out in Cox v. Martin, *supra*, is always personal, in the sense that it is terminable by death, and that performance of it cannot be demanded of his personal representatives, and it is also true that such a contract is terminated by death when the service of the person employed is "indispensable in the performance of the contract." But as herein already pointed out, the service of no special person is "indispensable in the performance of the contract" in contracts, such as the one under review, with a firm of general practitioners, contracted with as a firm, and not as individuals. The McGill case ignores absolutely the duty and obligation of the surviving partner to the client and to the estate of his deceased partner—to our mind, a very important and material consideration, and which must often vary the general rule so broadly stated in that case. If, after dissolution of the partnership by death or otherwise, the estate of the retiring partner be liable for the tortious or negligent act of his late partner in reference to partially fulfilled executory contracts, as decided in the McGill case, Wilkinson v. Griswold, 12 Smedes & M. 669, and other cases, it would be illogical and inequitable to deny the representatives of the deceased partner an equitable participation in the compensation accruing by reason of the subsequent performance of such contracts by the surviving partner, and which the survivor was in duty bound to perform for the benefit of the firm. From the foregoing, it necessarily follows that the surviving partner could not of his own motion procure release from this duty or service, and refuse to carry out to its ultimate completion, the work which had been entrusted to the firm before the death of his partner. Nor could the client, with the intent of defeating the claim of the estate of the deceased partner, re-employ the survivor of the law firm, and thus, by making a new contract, have the benefit, without making compensation therefor, of the services rendered of the deceased partner, and by such contract only procure services to which he was already entitled.

Making a concrete application of these general principles to the case at bar, and waiving consideration of all disputed contentions, we find that, after the death of Blair, Clark, Hood & Co., without offering to settle with the estate of Blair, attempted to enter into a new contract with Anderson, the surviving partner, by which Anderson was retained in their employ, and conducted to a satisfactory conclusion the litigation which had been entrusted to the firm of Blair & Anderson. It is true that the employment of Blair & Anderson was a joint employment, and that, by the death of one of the partners, clients were deprived of his services; but this does not render them the less liable for the compensation agreed on, for the good and sufficient reason that one member of the firm did perform the services which the firm undertook to render, and therefore the contract was fulfilled. It is also true that the employment of Anderson was by another agreement made after the death of Blair, but equity and good conscience forbid the surviving partner to abandon the business of the firm, and contract to the detriment of the financial interest if his deceased partner's estate, even when, as in the present case, such action is dictated by an honest, but erroneous, conception of the law. Nor can the client thus avail himself of the services rendered by the deceased attorney in his lifetime, and then refuse to pay the compensation agreed upon, after, by reason of such services, the litigation has been brought to a successful termination.

It may be that the surviving partner might have an equitable claim for a larger share of the compensation received for his services rendered after the death of his partner, but that question we are not called upon now to decide, for the reason that the executors of Blair agreed with Anderson as to what his compensation should be, and that compensation, the record discloses, has already been received by Anderson; and it further appears that, with eminent and commendable fairness and consideration, he expressly disclaims any interest in any fees which may be found due the estate of Blair by appellees. Clark, Hood & Co. did not take advantage of the option of finally terminating the contractual relations which existed between themselves and Blair & Anderson, did not offer to settle for services rendered previously, but contented themselves with allowing the surviving partner to remain in control of and conduct the business to its close; and this was a recognition and a continuance of their original contract, whereby they remain liable to the firm of Blair & Anderson for the full amount of the compensation originally agreed on; and, as Anderson acknowledges the receipt of his interest in that compensation, the remainder, to be ascertained by calculations according to the terms of the contract, is now due the estate of Blair.

It is urged by appellees that, viewing the services rendered by Blair & Anderson in the lifetime of Blair as a part performance of a contract, then the estate of Blair is not not now entitled to further compensation, because it is claimed that upon *quantum meruit* the firm had

been fully paid for all services rendered prior to the death of Blair. This reasoning is without force in the present case. The doctrine of *quantum meruit* can find no lodgment here. There was no partial performance of the contract in the instant case, on which a *quantum meruit* could be based or calculated. The contract was fully complied with by the rendition of the required services by the surviving partner. The firm was not discharged and settled with up to date of dissolution, but, through one member thereof, made full performance of the contract. This contract provided for both an absolute and contingent fee. The absolute fee had been paid, the contingent fee depended upon the successful termination of the suit; all to be due if the suit was won; nothing to be due if the suit was lost. Therefore the rights of Blair were not fixed until the termination of the litigation, and are now to be ascertained by a calculation upon the amount recovered, as the fruit of the services rendered by Blair & Anderson, whether as a firm or individually.

It follows, therefore, that the decree of the chancellor denying the relief prayed for by the cross-bill of appellants was error. Appellants, as executors of the estate of J. A. Blair, deceased, are entitled to recover the amount of the contingent fee due under the terms of the contract with Blair & Anderson, after first deducting therefrom the 4 1-6 per cent. received by W. D. Anderson since the death of J. A. Blair. All parties necessary to a final determination and adjudication by a court of equity of the matters here involved are before the court. The decree of the chancery court is reversed, and the cause remanded for further proceedings in accordance herewith. Reversed and remanded.

NOTE.—*Compensation of Attorneys Engaged in a Case as Partners.*—Since it is a most usual thing for lawyers to associate themselves together in the practice of the law, it is therefore important for them to be well informed as to their own interest in business contracted with one member of the firm as well as in such business as is contracted with the firm in general.

Where Business is Contracted with a Single Member of Firm.—Ordinarily, one who employs an attorney employs the firm of which such attorney is a member, and is not chargeable with knowledge of a private understanding as to compensation existing between the members of the firm. Williams v. More, 63 Cal. 50. Nor is the client liable for any services, which such other members of the firm might render. Evans v. Mohr, 42 Ill. App. 225. And this is the rule even where the attorney employed afterwards takes a partner. Such partner cannot recover for services rendered to a client who engaged his partner's services before the contract of partnership was entered into. Carr v. Wilkins, 44 Tex. 424; King v. Barber, 61 Iowa, 674, 17 N. W. Rep. 88. Thus, when an attorney is employed by a party, the law implies a contract between them; and, before a new partner of such attorney can be made a party to the contract, there must be some agreement or understanding to place the latter in a position that would entitle him to make a claim against the client who did not originally employ him. Davis v. Peck, 54 Barb. (N. Y.) 425. But see, *Contra:* Waples v. Layton, 24 La. Ann. 624. Sometimes, however, where a firm is employed on a contingent fee which bids fair to realize a fortune, the attorney who brought the business is inclined to desire all the benefits of the contract for himself. There is a scheme for attaining the desired end in such a case which has judicial sanction. Let the client discuss the case and pay all the attorneys on a *quantum meruit* for services already rendered, and afterwards employ one of them, to bring suit again. Under such circumstances, this is a separate and distinct employment, and the old firm is not entitled to any of the fees earned in the new suit. Tomlinson v. Polsley, 31 W. Va. 108, 5 S. E. Rep. 457.

Where Business is Contracted With the Firm.—If attorneys, who are co-partners, accept a retainer, it is a joint contract, continuing to the termination of the suit, and neither can be released from the obligations they have assumed, so far as their clients are concerned, by a dissolution of their firm, or any other act or agreement between themselves. Walker v. Goodrich, 16 Ill. (6 Peck.) 341. Nor can any one of them abandon the contract without affecting the sufficiency of the performance on behalf of the firm. Morgan v. Roberts, 38 Ill. 65. This rule, however, does not prevent the members of the firm from designating any one of their members to conduct the actual trial of the case. All of the members do not have to be present at every trial. Phillips v. Edsall, 127 Ill. 535, 20 N. E. Rep. 801. The fact that one of the members of a firm has been raised to the bench does not affect the contract. Simon v. Brashear, 9 Rob. (La.) 59, 41 Am. Dec. 321.

While underthis rule, which we have just laid down, the death of any member of a law firm will determine all contracts for the services of the firm at the option of the client, nevertheless the surviving partner may recover for whatever has been done. Landa v. Shook, 87 Tex. 608, 30 S. W. Rep. 536; McGill v. McGill, 59 Ky. (2 Metc.) 258. And in case of the dissolution of the partnership for any reason, the client cannot refuse the services of the surviving partner without a tender of a fair compensation for the services rendered in preparing for the trial; and where the services were rendered by such partner with due professional skill, he is entitled to the entire fee. Smith v. Hill, 13 Ark. (8 Eng.) 173; Johnson v. Bright, 15 Ill. (5 Peck.) 464. Or where a partnership engaged in a suit is dissolved and one of the partners conducts the suit to its termination, the attorneys are entitled to a joint recovery of the compensation. Page v. Walcott, 81 Mass. (15 Gray) 536.

JETSAM AND FLOTSAM.

A JUDGMENT UPON THE PRESUMPTION OF A MIAMI VALLEY COMPLEXION CONCERN.

As a sample of the sly, quiet humor, that sometimes creeps into the best decisions of our courts we notice the introductory paragraphs of a recent able decision of the Montgomery common pleas, Empress Josephine Toilet Co., *In re*, 13 Dec. 661.

"This was a corporation formed for the purpose of beautifying the females of the community with a powder or lotion, warranted to remove tan, freckles, blackheads, and such like blemishes from the natural body, and restore to cheeks, faded with age and yellow with jaundice, the bloom and blushes of youth.

"In the malarial districts of Indiana and Illinois, or the swamps of Florida, or the sewerless city of

New Orleans, where the sour complexion microbe flourishes, and malaria, yellow fever and old-fashioned ague have long since celebrated the golden jubilee of their reign, the company might have succeeded. But among the beauties of the Miami valley, whose rose-tinted cheeks, nourished by the pure air and pure water and rich products of this garden of the Lord, any complexion company would be doomed to failure from the beginning.

"And in this connection, it is a singular fact that of all the men in this fair city (Dayton), none was better acquainted with the loveliness of the forms and faces of its female citizens and the natural purity of their complexions than were these very young men who put their money into this enterprise. The result seems to be something in the nature of a judgment upon them for this apparent reflection upon the complexions of their lady friends."

SAM DYSART DIES IN ARIZONA.

"Sam" Dysart has just died in Phoenix, Arizona.

Mr. Dysart was employed once to defend several boys and girls who had been arrested for giggling in church. The charge was disturbing religious worship. Elder Tice Spears was the preacher and informant. He was known for his stern piety and singularly strong voice. After he told his story, he sat with clasped hands waiting for the defendant's attorney to begin on him. He didn't have long to wait. 'Sam" Dysart's cross-examination was as follows:

"Brother Spears, you led the meetin' that night?"

"I did, sir."

"You prayed?"

"I did, sir."

"And preached?"

"I tried to."

"And sung?"

"I sung."

"What did you sing?"

"'There is a Fountain Filled With Blood,' sir."

Here Dysart pulled a hymn book out of his pocket and handed it to the witness, with the remark:—

"Please turn to that song, Brother Spears." The witness did so.

"Well, stand up and sing it now, if you please."

"But, I can't sing before this sort of a crowd."

"Brother Spears" (with much apparent indignation), "do I understand that you refuse to furnish legitimate evidence to this jury?"

"No—no—but, you see—"

"Your Honor," said Dysart, turning to the court, I must insist that the witness shall sing the song alluded to just as he did the night of the alleged disturbance. It is a part of our evidence, and very important. The reason for it will be disclosed later on."

"And mind you, Brother Spears," said Dysart seriously, "you must sing it just as you did that night; if you change a note you will have to go back and do it all over again."

The witness got up and opened the book. There is a difference between singing to a congregation in sympathy with you and a crowd of court room habitues. Brother Spears was painfully conscious of the fact. In the old time hymns you begin in the basement and work up to the roof, then leap off from the dizzy height and finish the line in the basement. That's the way the witness did. He had a good voice —that is, it was strong. It threatened the window lights.

The crowd did not smile—they just yelled with aughter. The jurymen bent double and almost rolled from their seats. The judge bit his cob pipe harder and tried to look solemn. It was no use. There were only two straight faces in the house and one belonged to a deaf man and the other to "Sam" Dysart. Sam said to the jury:

"If you gentlemen think you could go to one of Brother Spear's meetings and behave better than you have here, you may be justified in convicting these boys and girls."

The foreman asked if they could bring in a verdict for the children defendants without the formality of retiring to consider the matter.—*American Legal News.*

HUMOR OF THE LAW.

Another J. P. had just finished giving his decision on a question of law in a manner highly satisfactory to himself. "But," interposed the counsel, "I would like to cite Blackstone."

"The court does not need instruction in the law and he has given his decision," replied the justice.

"Indeed it was not to instruct your Honor I desired to cite the authority, but merely to show you how foolish Blackstone is."

The railway magnate seemed put out when the ol gentleman, who had retired from the bench and resumed practice, would not promise an opinion for the afternoon, so the old gentleman remarked in his pleasant way: "Perhaps you better see my son Tom. He's just outside and will give you an opinion within five minutes. You see, he finished the law school last June."

As one of the very few occasions when the wit of Rufus Choate was foiled, an incident is recalled when that brilliant lawyer was examining one Dick Barton, chief mate of the ship "Challenge." Choate had cross-examined him for over an hour, hurling questions with the speed of a rapid-fire gun.

"Was there a moon that night?"

"Yes, sir."

"Did you see it?"

"No, sir."

"Then how did you know there was a moon?"

"The 'Nautical Almanac' said so, and I'll believe that sooner than any lawyer in the world."

"Be civil, sir. And now tell me in what latitude and longitude you crossed the equator?"

"Ah, you are joking."

"No sir, I'm in earnest and I desire an answer."

"That's more than I can give."

"Indeed. You a chief mate and unable to answer so simple a question!"

"Yes, the simplest question I ever was asked. I thought even a fool of a lawyer knew there's no latitude at the equator."

Irish Magistrate (to prisoner at the bar): "Are ye guilty or not guilty?"

Prisoner: "Not guilty, sor."

Magistrate: "Thin git out of the coort. Phawt in the divil are ye doin' heere if ye're not guilty?"

Litigant—"You take nine-tenths of the judgment Outrageous!"

Lawyer—"I furnish all the skill and eloquence and legal learning for the cause."

Litigant—"But I furnish the cause."

Lawyer—"That is nothing. Anyone can do that."

"You always use such funny expressions," said a lawyer's wife to her husband when he returned home tired out by his day's labor. "Now, what do you mean by saying 'You have been working like a horse?'"

"Well, dear," he replied, I've been drawing a conveyance all day, and if that is not working like a horse, what is?"

"I assure you, gentlemen," said the convict entering the prison, "that the place has sought me, and not I the place. My own affairs really demanded all my time and attention, and I may truly say that my selection to fill this position was an entire surprise. Had I consulted my own interests, I should have peremptorily declined to serve, but as I am in the hands of my friends, I see no other course but to submit." And he submitted.

WEEKLY DIGEST.

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. ABATEMENT AND REVIVAL—Death of Contestant of Will.—Where, pending the contest of a will disposing of personal estate alone, the contestant dies, his personal representatives should be substituted, under Code, § 3445.—*In re* Wiltsey's Will, Iowa, 98 N. W. Rep. 294.

2. ACCIDENT INSURANCE — Waiver of Conditions. — Knowledge of insurer of facts making it inoperative at its inception, is a waiver of conditions of the policy in consistent with the known facts.—Andrus v. Maryland Casualty Co., Minn., 98 N. W. Rep. 200.

3. ACCORD AND SATISFACTION — Consideration.—Acceptance from an insolvent debtor of part payment in full satisfaction of a claim is founded on such consideration that the entire debt is thereby satisfied.—Engbretson v. Seiberling, Iowa, 98 N. W. Rep. 319.

4. ACCOUNT—Suit for an Accounting.—A suit for an accounting cannot be maintained, unless the bill discloses such a complexity as to render an accounting at law unduly burdensome.—Alexander v. Mason, U. S. C. C., S. D. N. Y., 126 Fed. Rep. 830.

5. ADMIRALTY — Jurisdiction. — The fact of locality alone does not give a court of admiralty jurisdiction of an action for a tort committed on the high seas or navigable waters, but it must further appear that the tort was maritime in character, having some relation to a vessel or its owners.—Campbell v. H. Hackfeld & Co. U. S. C. C. of App., Ninth Circuit, 126 Fed. Rep. 696.

6. APPEAL AND ERROR—Instructions. — An appellant cannot complain of a portion of the charge copied from one of his requested instructions. — Kinney v. McFaul, Iowa, 98 N. W. Rep. 276.

7. APPEAL AND ERROR—Insufficiency of Certificate.—A certificate on appeal from an order based on affidavits held insufficient, as not identifying the papers as those used, nor containing a certificate that all those used were included in those certified.—Milwaukee Trust Co. v. Sherwin, Wis., 98 N. W. Rep. 223.

8. APPEAL AND ERROR—Matters Reviewable.—Only the grounds set forth in the bill of exceptions for the exclusion of evidence will be noticed in the appellate court, though other grounds are embodied in the assignments of error.—Metropolitan Life Ins. Co. v. Gibbs, Tex., 78 S. W. Rep. 398.

9. APPEAL AND ERROR—Reversing Special Findings of Jury.—Where the evidence on an issue answered by a special finding of the jury was conflicting, such finding cannot be reversed on appeal, though the evidence seemed to preponderate against it.—Busse v. Rogers, Wis., 98 N. W. Rep. 219.

10. APPEAL AND ERROR—Reviewing Taxation of Costs. —Correctness of taxation of costs cannot be questioned on appeal, when not questioned before trial court.—Valentine v. Sweatt, Tex., 78 S. W. Rep. 885.

11. ASSAULT AND BATTERY — Accidentally Striking Third Person.—One who, in striking at a person in self-defense, wounds another, cannot be guilty of maliciously stabbing the latter.—O'Rear v. Commonwealth, Ky., 78 S. W. Rep. 407.

12. ASSIGNMENTS—Chose in Action.—An assignment of a chose in action is ineffectual, as against the debtor, in the absence of notice of the assignment or knowledge of facts sufficient to put him on inquiry.—Nielsen v. City of Albert Lea, Minn., 98 N. W. Rep. 195.

13. ATTACHMENT—Action by Nonresident.—An action against a nonresident to recover money may be brought in any county of the state, and an attachment issued directed to the sheriff of any other county for service, under Gen. St. 1894, § 5186.—Clements v. Utley, Minn., 98 N. W. Rep. 188.

14. ATTACHMENT—Action on Bond.—The giving of a bond to release an attachment, under the Alaska Code, does not estop the defendant to maintain an action on the attachment undertaking, if it is finally determined that plaintiff had no cause of action. — Anvil Gold Min. Co. v. Hoxsie, U. S. C. C. of App., Ninth Circuit, 125 Fed. Rep. 724.

15. ATTORNEY AND CLIENT—Action to Recover for Services.—In an action by attorneys to recover the reasonable value of services, professional and non-professional, the admission of evidence relative to the amount involved in the transaction, to determine the responsibility assumed by plaintiffs, held not error.—Graves v. Sanders, U. S. C. C. of App., Ninth Circuit, 125 Fed. Rep. 690.

16. BANKRUPTCY—Attorney's Fees.—The allowance of an attorney's fee in bankruptcy is in the discretion of the judge, and payments of fees in contemplation of bankruptcy are valid only in so far as subsequently approved by the court.—*In re* Morris, U. S. D. C., E. D. N. Car., 125 Fed. Rep. 841.

17. BANKRUPTCY—Conditional Purchase of Goods for Resale.—Goods purchased to be resold in due course of business cannot be claimed by the seller, as against the purchaser's trustee in bankruptcy, as sold on a conditional sale.—*In re* Carpenter, U. S. D. C., N. D. N. Y., 125 Fed. Rep. 831.

18. BANKRUPTCY—Existence of Partnership.—An adjudication of bankruptcy against a partnership will be denied, where the existence of the partnership is put in issue by some of the members, until the existence of the partnership was established.—*In re* McLaren, U. S. D. C., M. D. N. Y., 125 Fed. Rep. 835.

19. BANKRUPTCY—Liquor License as an Asset.—A liquor license held part of a bankrupt's assets, and claimable as part of his exemption.—*In re* Olewine, U. S. D. C., M. D. Pa., 125 Fed. Rep. 840.

20. BANKRUPTCY—Preferences.—Circumstances of debtor's financial condition such as would put an ordinarily prudent man on inquiry, when brought home to the creditor, constitute a reasonable cause to believe the debtor insolvent.—Bardes v. First Nat. Bank, Iowa, 98 N. W. Rep. 284.

21. BANKRUPTCY—Preferences.—Where an alleged involuntary bankrupt admitted that he had transferred his property for cash and appropriated the proceeds to certain debts, he thereby admitted an act of bankruptcy by preferring some of his creditors.—Brinkley v. Smithwick, U. S. D. C., E. D. N. Car., 126 Fed. Rep. 686.

22. BANKRUPTCY—Secured Claims.—Where a mortgage given by a bankrupt did not secure an open account, an agreement that such account should be included could not be implied in favor of subsequent creditors of the bankrupt.—*In re* Johnson, U. S. D. C., E. D. N. Car., 125 Fed. Rep. 888.

23. BILLS AND NOTES—Condition of Payment.—An answer alleging that certain notes sued on were not to be paid, except from the profits of a theatrical venture of which plaintiff and his predecessors had notice, and that there was no profit, held to state a sufficient defense.—Hatzel v. Moore, U. S. C. C., S. D. N. Y., 125 Fed. Rep. 828.

24. BILLS AND NOTES—Partnership.—That there was a partnership between parties to a note, or that the affairs of the partnership were unsettled, held no defense to the action on the note.—Vapereau v. Holcombe, Iowa, 98 N. W. Rep. 279.

25. BILLS AND NOTES—Place of Payment.—Where the place of payment is expressed in notes, the presumption is that the parties contracted with reference to the law of that place.—Brown v. Gates, Wis., 98 N. W. Rep. 205.

26. BOUNDARIES—Establishment.—In a boundary suit the fact that there are well-known and undisputed original corners established on the ground, held not to control other calls, which are conflicting and contradicting.—Masterson v. Ribble, Tex., 78 S. W. Rep. 358.

27. BRIBERY—Construction of Statute as to Senators.—A person elected to the office of senator of the United States, until he has been accepted by the senate as a member and has assumed the duties of the office, is not a "member of congress," within the meaning of Rev. St. § 1781, making it a criminal offense for a "member of congress, or any officer or agent of the government" to receive or agree to receive a bribe for procuring or aiding to procure for another any contract, office or place from the government.—United States v. Dietrich, U. S. C. C., D. Neb., 126 Fed. Rep. 676.

28. BRIBERY—Insufficiency of Evidence.—On the indictment of a mayor for bribery in receiving a certain named sum from persons named to insure their protection from prosecution for a named time, held, that the evidence was insufficient to sustain conviction.—State v. Ames, Minn., 98 N. W. Rep. 190.

29. BROKERS—Commissions.—Where a real estate agent rendered services in procuring a purchaser, a commission was earned, though the agent did not himself close the transaction.—Reishus-Remer Land Co. v. Benner, Minn., 98 N. W. Rep. 186.

30. CARRIERS—Contributory Negligence of Passenger.—If the negligence of a passenger on a street car contributed to her injury as an efficient cause, she could not recover.—Root v. Des Moines Ry. Co., Iowa, 98 N. W. Rep. 291.

31. CARRIERS—Place of Delivery.—Bills of lading and drafts held to constitute a written contract to deliver consignment in a particular county.—Callender, Holder & Co. v. Short, Tex., 78 S. W. Rep. 366.

32. CHATTEL MORTGAGES—Purchaser of Branded Cattle Apparently not Included.—Purchaser of cattle branded with an inverted U and no bar in connection therewith held justified in assuming they were not covered by chattel mortgage on live stock marked with the "U over bar" brand.—Packers' Nat. Bank v. Chicago, M & St. P. R. Co., Iowa, 98 N. W. Rep. 310.

33. COMPROMISE AND SETTLEMENT—Payment of Draft.—Plaintiff's payment of a draft for advancements, in the absence of a statement which defendant agreed to attach to the drafts, held not to constitute a settlement, precluding plaintiff from recovering overcharges.—D. Sullivan & Co. v. Owens, Tex., 78 S. W. Rep. 378.

34. CONSTITUTIONAL LAW—Acquiescence in Unconstitutional Legislation.—Acquiescence in the exercise of powers under unconstitutional legislation, though continued for any length of time, cannot legalize such exercise of power, when clearly usurped.—*Ex parte* Heyman, Tex., 78 S. W. Rep. 349.

35. CONSTITUTIONAL LAW—Publication of Proposed Amendments.—Publication in house and senate journals of amendments to Const. art. 10, § 10, relating to county boards of auditors, held a sufficient compliance with Const. art. 20, § 1.—People v. Loomis, Mich., 98 N. W. Rep. 262.

36. CONTRACTS—Termination by Becoming Unlawful.—A contract, lawful in its inception, but which becomes unlawful by reason of some subsequent event, is thereby dissolved and terminated, in so far as it remains executory.—United States v. Dietrich, U. S. C. C., D. Neb., 126 Fed. Rep. 671.

37. CONTRACTS—What Law Governs.—Contract made in one state, to be performed in another, is to be governed by law of place of performance.—Brown v. Gates, Wis., 98 N. W. Rep. 205.

38. CORPORATIONS—Stock Assessment.—Defendants held not released from liability for assessments on their stock subscriptions, though, as directed therein, the the stock was issued in the name of another; he not being the owner.—American Alkali Co. v. Bean, U. S. C. C., E. D. Pa., 125 Fed. Rep 823.

39. COSTS—Amendment of Pleadings.—A successful plaintiff should not be charged with the costs up to the filing of an amended petition which does not change the cause of action.—Keas v. Gordy, Tex., 78 S. W. Rep. 385.

40. COUNTIES—Adjourned Meeting of Board.—A county board, having power to fix the salary of a county officer at an annual session, acts within its powers in fixing the salary at an adjourned meeting of the annual session.—Douglas County v. Sommer, Wis., 98 N. W. Rep. 249.

41. COURTS—"Peculiar and Satisfactory Reasons."—The "peculiar and satisfactory reasons" for the exercise of jurisdiction in cases other than on appeal refer to circumstances rendering the exercise of jurisdiction elsewhere in the given case inadequate or insufficient.—*In re* Mielke, Wis., 98 N. W. Rep. 245.

42. CRIMINAL TRIAL—Cumulative Evidence.—Tha testimony of absent witnesses is cumulative does not preclude a continuance in criminal case, where it should otherwise be granted.—State v. Phillips, S. Dak., 98 N. W. Rep. 171.

43. CRIMINAL TRIAL—Directing Verdict in Opening Statement.—Where by the opening statement for the prosecution in a criminal trial a fact is deliberately admitted which must necessarily prevent a conviction, the court may close the case by directing a verdict for the accused.—United States v. Dietrich, U. S. C. C., D. Neb., 126 Fed. Rep. 676.

44. CRIMINAL TRIAL—Instructions in Homicide Case.—An instruction that, if any one of the jury entertained a reasonable doubt of defendant's guilt, the jury could not find him guilty, held properly refused.—State v. Coleman, S. Dak., 98 N. W. Rep. 175.

45. DAMAGES—Death of Son.—The fact that parents applied to the support of an unmarried daughter, who

lived with them, a part of the sums received from their son, held not to deprive them of the right to recover to the full extent of contributions expected from him.—Missouri, K. & T. Ry. Co. v. O'Connor, Tex., 78 S. W. Rep. 374.

46. DAMAGES—Difficulty of Estimating.—Damages recoverable for a tort are not limited to such as the tortfeasor contemplated, but include all which naturally and proximately flow from the injury.—Cowan v. Western Union Tel. Co., Iowa, 98 N. W. Rep. 281.

47. EJECTMENT—Adverse Possession. — In ejectment, where defendant pleaded adverse possession, evidence as to payment of taxes by plaintiff held competent.—Walling v. Eggers, Ky., 78 S. W. Rep. 428.

48. EMINENT DOMAIN—Additional Servitude.—An electric street railway in a street is not an additional burden on the fee. — Younkin v. Milwaukee Light, Heat & Traction Co., Wis., 98 N. W. Rep. 215.

49. EVIDENCE—Fraudulent Conveyance.—After sale of goods, conversation between vendors' manager and a creditor held not to bind purchaser.—Urdangen & Greenberg Bros. v. Donor, Iowa, 98 N. W. Rep. 317.

50. EVIDENCE—Hypothetical Questions.—Where there was no evidence that plaintiff had been previously injured, a hypothetical question based on such fact was properly excluded.—Ruscher v. City of Stanley, Wis., 98 N. W. Rep. 223.

51. EVIDENCE—Offer of Compromise.—Statement of insured's attorney in letter to defendant company held not objectionable, in action on policy for reference to compromise, made in reply to letter admitted without objection.—Ætna Ins. Co. v. Fitze, Tex., 78 S. W. Rep. 370.

52. EVIDENCE — Shorthand Reporter's Notes. — The translation of a shorthand reporter's notes of testimony of a witness, since deceased, duly certified, held incompetent to prove what he testified to.—*In re* Wiltsey's Will, Iowa, 98 N. W. Rep. 294.

53. EVIDENCE—Statements Made by Physician at Time of Injury.—Testimony, in an action against a railroad for personal injuries received by a passenger in alighting from a train, as to what a physician said after an examination of the person injured, is hearsay.—Missouri, K. & T. Ry. Co. of Texas v. Criswell, Tex., 78 S. W. Rep. 388.

54. EXECUTION—Record Title of Heir.—Heir held to have record title of ancestor, to which possession would be referred, rather than to unrecorded deed from coheir, on question of notice to execution purchaser.—Sanger Bros. v. Collum, Tex., 78 S. W. Rep. 401.

55. EXECUTION—Setting Aside Sale.—Lien of execution held not discharged, where the execution sale is set aside because the sheriff had not authority to make it.—Campau v. Detroit Driving Club, Mich., 98 N. W. Rep. 267.

56. EXECUTORS AND ADMINISTRATORS—Action Against Estate. — In proceedings against decedent's estate to recover an alleged loan to deceased, a question put to claimant as to the nature of business dealings he had had with deceased was permissible.—Kinney v. McFaul, Iowa, 98 N. W. Rep. 276.

57. EXECUTORS AND ADMINISTRATORS—Claim Against Estate.—Refusal to allow executor, in an action on a claim against the estate to prove the value of the use of decedent's land, which plaintiff had enjoyed, held proper.—Dunton v. Dawley, Iowa, 98 N. W. Rep. 307.

58. FACTORS—Assignment of Bill of Lading.—An assignee of certain drafts attached to bills of lading for corn shipped held liable to the consignee for the difference between the amount paid on such drafts and the value of the corn.—F. Groos & Co. v. Brewster, Tex., 78 S. W. Rep. 359.

59. FACTORS—What Constitutes.—In order to create the status of a factor, it is only necessary that he have possession of property with authority to sell the same on commission.—Beardsley v. Schmidt, Wis., 98 N. W. Rep. 235.

60. FALSE IMPRISONMENT—Obstructing Road Overseer in Building Highway.—One over whose land road overseer illegally attempts to open a highway is not authorized to take the law into his own hands and prevent overseer from performing his duties.—Richardson v. Dybedahl, S. Dak., 98 N. W. Rep. 164.

61. FEDERAL COURTS—Setting Aside Probate of Will.—A federal court of equity is without jurisdiction of a suit to set aside the probate of a will, unless by the law of the state a suit in equity for the purpose may be maintained in a state court.—Carrau v. O'Calligan, U. S. C. C. of App., Ninth Circuit, 125 Fed. Rep. 657.

62. FIRE INSURANCE—Acceptance of Premium Waives Question of Title.—Receipt of premium held to estop insurance company from relying on misrepresentation as to title to property.—Continental Fire Ins. Co. v. Cummings, Tex., 78 S. W. Rep. 378.

63. FIRE INSURANCE—Character of Accounts Kept.—Failure to keep account of goods taken from stock for domestic consumption held not violation of clause in policy requiring books of account to be kept.—Ætna Ins. Co. v. Fitze, Tex., 78 S. W. Rep. 370.

64. FIRE INSURANCE—Notice to Agent.—Prior to the standard policy law, knowledge of the agent of an insurance company, at the time of making a contract of insurance, of facts affecting the validity thereof, was knowledge of the company.—Welch v. Fire Ass'n of Philadelphia, Wis., 98 N. W. Rep. 227.

65. FIRE INSURANCE—Valuation of Property.—Where insurer was afforded every opportunity to survey a building before loss, and its agent who solicited the policy was well acquainted with its value, insurer was estopped from denying the valuation stated in the policy.—Ritchie v. Home Ins. Co., Mo., 78 S. W. Rep. 341.

66. FRAUDULENT CONVEYANCES—Notice of Vendor's Fraud.—To render purchase of goods fraudulent as to vendors' creditors, purchaser must have knowledge or notice of vendors' fraudulent intent. — Urdangen & Greenberg Bros. v. Doner, Iowa, 98 N. W. Rep. 317.

67. GARNISHMENT — Rents and Profits in Receiver's Hands.—Rents and profits in the hands of the receiver held not subject to garnishment.—Campau v. Detroit Driving Club, Mich., 98 N. W. Rep. 267.

68. HIGHWAYS—Rights of Abutting Owners.— Owners of a lumber yard held liable for injuries to a child while playing on a pile of timbers negligently piled in the highway adjoining their yard.—Busse v. Rogers, Wis., 98 N. W. Rep. 219.

69. HIGHWAYS—Right to Use Surface Water.—For the purpose of improving its highway, a town is entitled to obstruct and divert the natural flow of surface water.—Merkel v. Town of Germantown, Wis., 98 N. W. Rep. 210.

70. HOMESTEAD—Fraudulent Conveyance.—Where the husband has reduced his wife's estate to possession, equity will not interpose to provide for the wife, to the exclusion of the husband's creditors.—Scott v. Powers, Little & Co., Ky., 78 S. W. Rep. 408.

71. HOMESTEAD — Incumbrance by Husband. — Contract for the purchase of fruit trees, to be planted on the homestead and paid for out of proceeds, creating a lien on the premises therefor, was not for such improvements as would constitute a lien paramount to the rights of the wife.—Stark v. Anderson, Mo., 78 S. W. Rep. 340.

72. HOMICIDE—For Purpose of Procuring Life Insurance Money.—On prosecution for murder for purpose of procuring life insurance money, medical examination and application for insurance held admissible.—State v. Coleman, S. Dak., 98 N. W. Rep. 175.

73. INSANE PERSONS—Compensation for Services by Volunteer. — A volunteer, rendering services to an incompetent without the knowledge of his guardian who had contracted for the incompetent's care held not entitled to recover therefor as necessaries.—Schramek v. Shepe:F, Wis., 98 N. W. Rep. 213.

74. INTEREST—To Run from When.—Where defendants drew drafts on plaintiff in San Antonio, payable in Boston, with exchange, defendants were not entitled to charge interest until they received notice of payment of the drafts.—D. Sullivan & Co. v. Owens, Tex., 78 S. W. Rep. 373.

75 JUDGMENT—Amendment.—A court cannot amend its judgment after the adjournment of the term, except as provided by statute.—Smallwood v. Love, Tex., 78 S. W. Rep. 400.

76. JUDGMENT—Restraining Execution where Judgment is Void.—One against whom void judgment has been rendered is not guilty of laches, so as to preclude injunction of execution, in failing to act in reference thereto until issuance of execution.—Cooley v. Barker, Iowa, 98 N. W. Rep. 289.

77. LANDLORD AND TENANT—Waiver of Lien Without Consideration.—Waiver by landlord's agent of landlord's lien on crops held good, though made without consideration.—Wimp v. Early, Mo., 78 S. W. Rep. 348.

78. LIFE INSURANCE—False Statement in Application.—A false statement, purporting to be a complete answer to a question, in an application for life insurance which made such statements warranties, held to authorize a forfeiture of the policy.—Farrell v. Security Mut. Life Ins. Co., U. S. C. of App., Second Circuit, 125 Fed. Rep. 684.

79. LIFE INSURANCE—Insurable Interest of Niece.—Niece, having no expectation of a pecuniary benefit from uncle, except occasional gift, held to have no insurable interest in his life.—Wilton v. New York Life Ins. Co., Tex., 78 S. W. Rep. 403.

80. LIFE INSURANCE—Waiver of Death Proofs.—That plaintiff, at the time he demanded blanks for proofs of death from insurer, was not authorized to receive payment, did not prevent insurer's refusal of blanks from operating as a waiver of proofs of death.—Metropolitan Life Ins. Co. v. Gibbs, Tex., 78 S. W. Rep. 398.

81. LIMITATION OF ACTIONS—Conversion of Corporate Property.—Administratrix's failure to discover that intestate had interest in corporation held not to affect running of limitations on her action for conversion thereof by majority of stockholders.—Bates v. United States, Mich., 98 N. W. Rep. 259.

82. MASTER AND SERVANT—Assumed Risk.—Where a mature servant was injured by the caving of a sand bank, the condition of which was as obvious to him as to his master, he assumed the risk of such injury.—Ft. Worth Stockyards Co. v. Whittenburg, Tex., 78 S. W. Rep. 363.

83. MASTER AND SERVANT—Proximate Cause of Injury.—Insecure condition of platform held proximate cause of employee's injury, though he slipped and fell on it, causing it to fall.—Monongahela River Consol. Coal & Coke Co. v. Campbell, Ky., 78 S. W. Rep. 405.

84. MASTER AND SERVANT—What State's Law Governs.—Where an accident to an employee happened in Tennessee, the law of that state must govern in an action for the injury brought in Kentucky.—Illinois Cent. R. Co. v. Jordan, Ky., 78 S. W. Rep. 426.

85. MINES AND MINERALS—Quieting Title.—A complainant lacks the requisite possession to entitle him to maintain a suit in equity to cancel an oil lease as a cloud on his title, where it appears from the bill that defendants, with his consent, drilled producing wells thereunder, and that they are still in possession of and operating the same.—Kellar v. Craig, U. S. C. C. of App., Fourth Circuit, 126 Fed. Rep. 630.

86. MORTGAGES—Action for Deficiency Judgment.—An implication that defendants were the real purchasers of mortgaged premises, the title to which was taken in the name of another, could not arise in favor of the mortgagee, in action against defendants for a deficiency under the mortgage.—Arnold v. Randall, Wis., 98 N. W. Rep. 239.

87. MORTGAGES—Failure to File a Lis Pendens.—The failure to file a *lis pendens* as provided for by statute does not change the effect of the judgment rendered, which is notice to, and binds, all persons subsequently dealing with the property affected.—London & San Francisco Bank v. Dexter, Horton Co., U. S. C.C. of App., Ninth Circuit, 126 Fed. Rep. 593.

88. MORTGAGES—Right of Mortgagee to Net Income.—A mortgagee held entitled to the net earnings of a receivership in the foreclosure suit as against judgment creditors.—Boyce v. Continental Wire Co., U. S. C. C. of App., Seventh Circuit, 125 Fed. Rep. 740.

89. MORTGAGES—Subrogation.—Where a junior lien holder purchased a senior mortgage, and had the same satisfied of record under a mistaken belief as to the effec of his junior lien, he was entitled to have such satisfaction canceled as against the mortgagor.—Bowen v. Gilbert, Iowa, 98 N. W. Rep. 273.

90. MUNICIPAL CORPORATIONS—Defective Sidewalks.—In an action against a city for the death of a person, following a fall from the sidewalk, the question whether the distance from the walk to the street, rather than the act of falling, caused the death, is for the jury.—Schnee v. City of Dubuque, Iowa, 98 N. W. Rep. 298.

91. MUNICIPAL CORPORATIONS—Liability for Water Furnished.—A civil district, having no power to contract for water for fire protection, is not liable for water furnished for such purpose.—South Covington Dist. v. Kenton Water Co., Ky., 78 S. W. Rep. 420.

92. MUNICIPAL CORPORATIONS—Street Improvement, Action by Abutting Owners.—Owners of lots liable to assessment for the construction of city sidewalks held parties to proceedings therefor, and entitled to insist on the city's compliance with its charter and statutory provisions.—City of Waukesha v. Randle, Wis., 98 N. W. Rep. 237.

93. MUNICIPAL CORPORATIONS—Unhealthy Condition of Pest House.—City is not liable for unhealthy condition of pesthouse in which it confines person afflicted with contagious disease.—Having v. City of Covington, Ky., 78 S. W. Rep. 431.

94. NEGLIGENCE—Operation of Engine.—That the traveled way, on which plaintiff traveled, when injured through frightening of team, was not a street, held not to affect right of recovery.—Wolf v. Des Moines Elevator Co., Iowa, 98 N. W. Rep. 301.

95. NEGLIGENCE—Places Attractive to Children.—In an action for injuries to a child while playing on a pile of timbers, complaint construed, and held to charge negligence in the piling of the timbers, as well as in the leaving of one of them suspended in derrick chains.—Busse v. Rogers, Wis., 98 N. W. Rep. 219.

96. PARTIES—Factor's Right to Sue.—As between a factor and his vendor, the former is the owner of the property, and real party in interest, to sue to recover the price.—Beardsley v. Schmidt, Wis., 98 N. W. Rep. 235.

97. PATENTS—Failure to Fulfil Contract of Assignment.—The owner of a patent, who agrees to assign it, but in violation of his agreement refuses to do so, cannot recover from his intended assignee for an infringement.—Schmitt v. Nelson Valve Co., U. S. C. C. of App., Third Circuit, 125 Fed. Rep. 754.

98. PLEADING—New Causes of Action.—The denial of the right of an executor, in an action on a claim against the estate to inject into the case new causes of action, held not cause for reversal.—Dunton v. Dawley, Iowa, 98 N. W. Rep. 307.

99. PRINCIPAL AND AGENT—Contract for Loan of Money.—Where agents of a capitalist only agreed to submit applications for loans, they were not personally liable, on his refusal to make the loans, on the ground that they had no authority to bind their client to furnish the money.—Klay v. Bank of Dallas Center, Iowa, 98 N. W. Rep. 315.

100. PRINCIPAL AND AGENT—Express Objection of Principal.—Agent entering into contract for sale of real estate, contrary to the express objection of the owner, of which the agent and the proposed vendee each had

knowledge, held not to bind the principal.—Fleming v. Burke, Iowa, 98 N. W. Rep. 288.

101. PRINCIPAL AND SURETY—Sureties Obtaining Preferences.—Certain sureties, having paid their *pro rata* of the bond and levied their judgment against their principal, held, that it did not inure to the benefit of the other sureties.—Campau v. Detroit Driving Club, Mich., 98 N. W. Rep. 267.

102. PUBLIC LANDS—Fraud of Entryman.—A patent for public lands will not be set aside for fraud of entryman, unless the proof is sufficient to produce a conviction that the fraud was committed.—United States v. Clark, U. S. C. C., D. Mont., 125 Fed. Rep. 774.

103. RAILROADS—Killing Infant Trespasser. — A railroad held liable for killing a boy three years old on the track, where by ordinary care the persons in charge of the train could have seen him and prevented the accident.—Louisville & N. R. Co. v. Logsden's Adm'r, Ky., 78 S. W. Rep. 409.

104. RAILROADS—Proximate Cause of Injury at Crossing.—The fact that defendant may have been negligent in obstructing a street with its cars held not the proximate cause of an injury resulting from an accident in driving around a car to avoid the obstruction.—Texas & P. Ry. Co. v. Kelly, Tex., 78 S. W. Rep. 372.

105. REFERENCE — Findings of Special Master. — A special master, to whom is referred a question of damages in an action at law, is appointed in aid of the court, which is not bound by his findings, although no exceptions are filed thereto.—Terry v. Naylor, U. S. C. C., E. D. N. Car., 125 Fed. Rep. 804.

106. REFORMATION OF INSTRUMENTS—Mutual Mistake. —Where right of law was included in deed by mistake of law or fact of all parties, deed will be reformed.—Fierce v Houghton, Iowa, 98 N. W. Rep. 306.

107. RELEASE—Life Insurance Assignment. — An intended assignment by the beneficiaries in a life policy to insured's administrator, being without consideration, may be revoked.—Saling v. Bolander, U. S. C. C. of App., Ninth Circuit, 125 Fed. Rep. 701.

108. REMOVAL OF CAUSES—Reforming Pleadings.—On removal of a cause commenced under code procedure by which forms of action are abolished, it is necessary for the federal court to determine the nature of the action, and to assign it to the law of equity side of the court accordingly, and to require the pleadings to be reframed, if necessary.—Fletcher v. Burt, U. S. C. C. of App , Sixth Circuit, 126 Fed. Rep. 619.

109. REMOVAL OF CAUSES—Separable Controversies.—Whether the cause of action against two defendants, one of whom is of the same citizenship as plaintiff, is separable, so as to authorize removal to the federal court, is to be determined by an examination of the complaint alone.—Harley v. Home Ins. Co., U. S. C. C., D. S. Car., 125 Fed. Rep. 792.

110. SALES—Rescission of Contract for False Representations.—Partner held estopped to assert, in action against firm based on false representations of credit made by him, that he did not know their falsity.—Tennent Shoe Co. v. Stovall & Brand, Ky., 78 S. W. Rep. 417.

111. SHERIFFS AND CONSTABLES—Compensation.—Allowance to sheriff, whose salary is fixed for street car and railway fare of prisoners in transporting them to and from the county jail, workhouse and courts, held illegal.—Douglas County v. Sommer, Wis., 98 N. W. Rep. 249.

112. SHERIFFS AND CONSTABLES—Indemnifying Bonds. —A sheriff held not entitled to recover on an indemnifying bond for attorney's fees incurred in an action for conversion of property levied on, but not paid.—Cousins v. Paxton & Gallagher Co., Iowa, 98 N. W. Rep. 277.

113. SHERIFFS AND CONSTABLES—Wrongful Seizure.—Attorney's fees paid by one whose property is wrongfully seized are not part of the damages he can recover for the wrongful seizure.—Vaughn v. Justice, Ky., 78 S. W. Rep. 424.

114. SHIPPING—Improper Storage.—Where a ship encountered storms during the voyage of such violence as to reasonably ccount for damage to the cargo without fault on the part of the ship, the burden rests on the cargo owner to prove that improper stowage caused or contributed to the damage.—The Musselcrag, U. S. D C., N. D. Cal., 125 Fed. Rep. 786.

115. STREET RAILROADS—Right of Way.—Motorman has no right to operate a car under the assumption that the right of way will be clear.—Rouse v. Detroit Electric Ry., Mich , 98 N. W. Rep. 258.

116. SUBROGATION—Junior Lien Holder.—A mortgagor, by making payments on a senior lien after it had been purchased by the holder of a junior lien, held to have ratified his purchase thereof.—Bowen v. Gilbert, Iowa, 98 N. W. Rep. 273.

117. TAXATION—Fraud in Levying Personal Tax.—Fraud in levying a personal property tax will not confer jurisdiction in equity to enjoin the tax, where the legal remedy remains adequate.—Nye, Jenks & Co. v. Town of Washburn, U. S. C. C., W. D. Wis., 125 Fed. Rep. 817.

118. TELEGRAPHS AND TELEPHONES—Cutting Trees.—Measure of damages for unreasonable cutting of trees by telephone company held difference between value of land after cutting, and what it would have been if cutting had been reasonable.—Meyer v. Standard Telephone Co., Iowa, 98 N. W. Rep. 300.

119. TRADE-MARKS AND TRADE-NAMES—Unlawful Competition.—Preparation of soap in single cake packages designated as "Old Stone Mill Soap" held unlawful competition, as against plaintiff, who had previously put up soap in like packages under the name "Old Mill Soap."—Swift &Co. v. Brenner, U. S. C. C., S. D. N. Y., 125 Fed. Rep. 826.

120. TRIAL—Duty to Prepare Instruction.—A party desiring correction of the charge, because of an omission which does not constitute positive error, should prepare and request an instruction for that purpose.—Keas v. Gordy, Tex., 78 S. W. Rep. 885.

121. TRIAL—Special Issues.—Where defendant's attorney did not clearly indicate that his request was for a special verdict, he was estopped to contend that the court erred in charging the jury generally as to the legal effect of their answers.—Schmitt v. Northern Pac. Ry. Co., Wis., 98 N. W. Rep. 202.

122. TRIAL—Undue Importance to One Fact by Court.—It is improper for the court to single out any one fact in a case, and, by too prominently placing the same before the jury, unduly impress them with the idea of its importance.—Missouri, K. & T. Ry. Co. of Texas v. O'Connor, Tex., 78 S. W. Rep. 374.

123. TRUSTS — Action Against Trustee. — Where a trustee had no authority to sell the trust property, except for cash, a bill alleging a threatened transfer for shares of a corporate transferee held not demurrable.—Moody v. Flagg, U. S. C. C., D. Mass., 125 Fed. Rep. 819.

124. TRUSTS—Conveyance Subject to Mortgage.—Defendants were not liable for any of the purchase price of land conveyed to a trustee for them, on the trustee's promise to pay.—Arnold v. Randall, Wis., 98 N. W. Rep. 239.

125. WILLS—Contest.—Under the laws of Washington the contest of a will is strictly a probate proceeding, and not a suit between parties, within the general jurisdiction of the state courts or that of a federal court.—Carrau v. O'Calligan, U. S. C. C. of App., Ninth Circuit, 125 Fed. Rep. 657.

126. WILLS—Fraud and Undue Influence.—A will cannot be set aside for fraud and undue influence, unless such fraudulent conduct was exercised by the other beneficiaries.—Wetz v. Schneider, Tex., 78 S. W. Rep 394.

127. WITNESSES — Impeaching Medical Testimony. — Testimony of medical witness, in action against railroad for injuries received by person in alighting from a train, held insufficient as predicate for impeachment. — Missouri, K. & T. Ry. Co. of Texas v. Criswell, Tex., 78 S. W. Rep. 388.